



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE SERVICES
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Workforce Services Policy - Auxiliary Aids and Americans with Disabilities Act

Effective Date: May 12, 2017

Duration: Indefinite

Subject:

This policy sets forth guidance requirements for all American Job Centers and WIOA service providers to ensure compliance with ADA requirements, as well as ensuring access to participants with disabilities in regards to the use of auxiliary aids and other communication assistance. The policy also addresses the use of service dogs in the AJC.

Purpose:

The Workforce Innovation and Opportunity Act (WIOA) highlights the importance of using technology to increase physical and programmatic accessibility to high quality workforce services. To afford individuals with disabilities equal opportunity to participate in WIOA Title I programs and activities, Title I fund recipients must take reasonable steps to furnish an appropriate auxiliary aid or service to those in need of hearing, seeing, or English language assistance.

Scope:

Office of the Governor, Tennessee Department of Labor and Workforce Development (TDLWD); Division of Workforce Services (WFS); Tennessee Department of Economic and Community Development (ECD); Tennessee Department of Education (TNED); Tennessee Department of Human Services (DHS); State Workforce Development Board (SWDB); Title I – Adult, Dislocated Worker, and Youth Programs, Title II – Adult Education and Family Literacy Act Program(AE); Title III – Wagner-Peyser Act Program (WP); Title IV – Vocational Rehabilitation Program (VR); Regional Planning Council (RPC); Local Workforce Development Boards (LWDB); Local Workforce Development Areas (LWDA); American Job Center (AJC); One-Stop Operator (OSO); Workforce System Sub-Recipients (Sub-Recipients); Workforce System Partners (Partners)

Background:

Modeled after civil rights legislation, The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The ADA is based on the presumption that people

with disabilities want to work and are capable of working. ADA requires employers, unions, government, and government assisted organizations to provide physical and programmatic access to individuals with disabilities.

WIOA requires equally effective services to be administered across the One-Stop Service Delivery system to aid individuals with disabilities. An initial greeting at the front desk will ensure that a disability will in no way diminish an individual's ability to physically or programmatically participate in the public workforce system.

In 2011, the Federal regulations related to ADA were revised to address how a place of public accommodation must accommodate the use of service animals by an individual with a disability. In 2013, The Tennessee General Assembly amended the language of TCA 62-7-112 for the purpose of making this statute consistent with the aforementioned Federal regulations. (State of Tennessee Office of Attorney General Opinion No. 13-59)

I. Definitions:

A. Auxiliary Aids and Services¹:

- Qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments
- Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments
- Acquisition or modification of equipment or devices
- Other similar services and actions

B. Competitive Integrated Employment Typically Found in the Community:

Full or part-time work at or above minimum wage but not less than the customary rate paid for the same or similar work performed by individuals without disabilities; eligible for benefits similar to those without disabilities performing the same work; fully integrated with coworkers without disabilities within the particular work unit and throughout the work site and as appropriate interaction with customers; and have similar opportunities for advancement as coworkers without disabilities. Rehabilitation Act of 1973 Section 7(5); 34 CFR Part 361.5(9)

C. Disability:

ADA defines a person with a disability as an individual who has a physical or mental impairment that substantially limits at least one major life activity, has a record of such impairment, or is regarded as having such impairment. Under ADA, disability is not a medical term but instead a legal categorization. Americans with Disabilities Act of 1990 (as amended) Section 12102(1).

D. Major Life Activities:

Include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Under the Americans with Disabilities Act

¹ Americans with Disabilities Act of 1990 Section 12103(1) and 28 CFR 36.303

of 1990 (as amended) Section 12102(2) major life activities [were] expanded in 2008 to include major bodily functions. Americans with Disabilities Act Amendments Act of 2008 Section 4(a)(2).

E. Major Bodily Functions:

Include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Americans with Disabilities Act Amendments Act of 2008 Section 4(a)(2)(8).

F. Consecutive Interpretation:

Is a translation technique where the interpreter waits for the speaker to finish a sentence or idea before rendering the speaker's words into the target language.

G. Primary Consideration:

Is honoring the choice of the participant with a disability unless the provider can demonstrate one of the following:

- Another equally effective means of communication is available.
- The use of the chosen means would result in a fundamental alteration of service, program, or activity².
- The use of the chosen means would result in an undue financial or administrative burden³.

H. Guide Dog in Training:

Includes dogs that are being raised for an accredited school for training guide dogs provided:

- The dog held on a leash and is under the control of its raiser/trainer.
- The raiser/trainer makes available credentials from the accredited school.
- The dog is wearing a collar, leash, or other appropriate apparel that identifies the dog with the accredited school.
- The accredited school includes a socialization process prior to the dog's advanced training.

I. Public Accommodation:

Is an amusement or recreation when accommodations are available. This includes but is not limited to any:

- Inn, hotel, restaurant, eating house, barber shop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public educational institution or elevator.

J. Work Task:

For the purpose of this guidance, the appropriate work or task of a service animal may include, but is not limited to:

- Assisting individuals who are blind or low vision with navigation and other tasks
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds
- Providing nonviolent protection or rescue work
- Pulling a wheelchair
- Assisting an individual during a seizure
- Alerting an individual to the presence of allergens
- Retrieving items such as medication or the telephone
- Providing physical support, assistance with balance, and stability to individuals with mobile disabilities
- Helping people with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors
- A Work Tasks May Not Include:
- The crime deterrent effect of the animal's presence

² 28 CFR 35.164

³ 28 CFR 35.164

- The provision of emotional support, well-being, comfort, or companionship

II. Instructions:

The LWDB must ensure the following auxiliary aids and services, or similar assistance as may be appropriate, be made available to customers in need of such aids and services in accordance with 28 CFR 36.303 and ADA Effective Communication Guidelines (Attachment A of this policy):

- Over-the-phone interpretation
- Consecutive interpretation:
 - In person translation; or
 - Written translation
- Sign language interpretation
- Text Telephone (TTY) devices, telephone amplifiers, or assistive listening devices
- Computer aided transcription services
- Hearing-aid compatible (HAC) telephones, captioning services and equipment
- Audio recordings, computer disks, visual devices, certain material in braille, and other assistive technologies designed to help needs of individuals who have hearing or seeing difficulties
- American Job Centers are reminded to use bilingual staff or frequent volunteers when available for translation. "Professional interpreters" may be appropriate to provide assistance. In determining the type of auxiliary aid or service to a participant with a disability, the Title I recipient must give primary consideration to the request of the participant.

III. Service Animals⁴:

Service animals are used by individuals with disabilities to assist with activities referred to and defined as "work tasks" (see page 4 of this policy). For this reason it is important to understand:

- Responsibility of accommodation in policies, practices, and procedures.
- The legal definition of a service animal.
- Responsibility to care for or supervise the service animal.
- Access to areas of public accommodation.
- Inquires that cannot be made in regard to a service animal.
- Inquires that can be made in regard to a service animal.
- Surcharges.

No individual shall be discriminated against on the basis of disability in the full and qual enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation⁵.

A public accommodation may ask an individual with a disability to remove a service animal from the premises if:

- The animal is out of control and the animal's handler does not take effective action to control it; or
- The animal is not housebroken⁶.

⁴ TCA 62-7-112

⁵ 42 USC 12182

⁶ 28 CFR 36.302(c)(2)

If an animal is properly excluded⁷, the public accommodation shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises⁸.

In Tennessee only dogs are considered to be service animals. Service animals are any dog that is individually trained to do work or perform a work task for the benefit of an individual with a disability⁹, including a:

- Physical;
- Sensory;
- Psychiatric;
- Intellectual; or
- Other mental disability

Note: Work Task is defined within the Definitions section of this guidance.

A public accommodation is not responsible for the care or supervision of a service animal. Individuals with disabilities shall be permitted to be accompanied by their service animal in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.

A public accommodation shall not:

- Ask about the nature or extent of a person's disability; or
- Require documentation.

In determining whether an animal qualifies as a service animal, a public accommodation may:

- Ask if the animal is required because of a disability; or
- Ask what task the animal has been trained to perform.

A public accommodation shall not ask or require an individual with a disability to:

- Pay a surcharge, even if people accompanied by pets are required to pay fees; or
- Comply with other requirements generally not applicable to people without pets.

If a public accommodation normally charges individuals for damage they cause, an individual with a disability may be liable for the damage caused by his or her service animal.

IV. Service Animal Work Task:

If a service animal fulfils an appropriate work task for the individual with a disability, then public accommodation is mandated and any refusal of such could result in a Class C misdemeanor.

If a service animal's work task is for the purpose of the crime deterrent effects of animal's presence, the provision of emotional support, well-being, comfort, or companionship of the individual with a disability then the accommodation of the animal is at the discretion of the American Job Center. Discretion should be based on the individual participant needs, the services the participant is seeking, as well as the accommodations of all other participants, test takers, visitors, and staff.

⁷ 28 CFR 36.302(c)(2)

⁸ 28 CFR 36.302(c)(3)

⁹ 28 CFR 36.104

References:

28 CFR 35.164; 28 CFR 36.104; 28 CFR 36.302(c)(2), 36.303; 29 CFR 38.9(f)(2), 34 CFR Part 361.5(9); 42 USC 12182, Americans with Disabilities Act Effective Communication Guidelines; Americans with Disabilities Act of 1990 (as amended) Section 12102(1), Americans with Disabilities Act of 1990 (as amended) Section 12102(2), Americans with Disabilities Act of 1990 (as amended) Section 12103(1), Americans with Disabilities Act Amendments Act of 2008 Section 4(a)(2), Americans with Disabilities Act Amendments Act of 2008 Section 4(a)(2)(B), Rehabilitation Act of 1973 Section 7(5), TCA 62-7-112 Admission of Service Dogs in Places of Public Accommodation, Office of the Attorney General, State of Tennessee July 26, 2013 Opinion Number 13-59 What Constitutes a "Service Animal" and Accommodation Thereof, Under ADA, 75 ALR Fed. 2d 49

Contact:

For any questions related to this policy, please contact the Program Integrity Unit at Workforce.Board@tn.gov.



Kenyatta Lovett, Workforce Services Assistant Commissioner

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ADA Requirements

Effective Communication

Overview

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

People who have vision, hearing, or speech disabilities ("communication disabilities") use different ways to communicate. For example, people who are blind may give and receive information audibly rather than in writing and people who are deaf may give and receive information through writing or sign language rather than through speech.

The ADA requires that title II entities (State and local governments) and title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities.

This publication is designed to help title II and title III entities ("covered entities") understand how the rules for effective communication, including rules that went into effect on March 15, 2011, apply to them.

- The purpose of the effective communication rules is to ensure that the person with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the covered entity.
- Covered entities must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities.
- The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person's normal method(s) of communication.

- The rules apply to communicating with the person who is receiving the covered entity's goods or services as well as with that person's parent, spouse, or companion in appropriate circumstances.

Auxiliary Aids and Services

The ADA uses the term "auxiliary aids and services" ("aids and services") to refer to the ways to communicate with people who have communication disabilities.

- For people who are blind, have vision loss, or are deaf-blind, this includes providing a qualified reader; information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information. A "qualified" reader means someone who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.
- For people who are deaf, have hearing loss, or are deaf-blind, this includes providing a qualified notetaker; a qualified sign language interpreter, oral interpreter, cued-speech interpreter, or tactile interpreter; real-time captioning; written materials; or a printed script of a stock speech (such as given on a museum or historic house tour). A "qualified" interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary.
- For people who have speech disabilities, this may include providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly), especially if the person will be speaking at length, such as giving testimony in court, or just taking more time to communicate with someone who uses a communication board. In some situations, keeping paper and pencil on hand so the person can write out words that staff cannot understand or simply allowing more time to communicate with someone who uses a communication board or device may provide effective communication. Staff should always listen attentively and not be afraid or embarrassed to ask the person to repeat a word or phrase they do not understand.

In addition, aids and services include a wide variety of technologies including 1) assistive listening systems and devices; 2) open captioning, closed captioning, real-time captioning, and closed caption decoders and devices; 3) telephone handset amplifiers, hearing-aid compatible telephones, text telephones (TTYs), videophones, captioned telephones, and other voice, text, and video-based telecommunications products; 4) videotext displays; 5) screen reader software, magnification software, and optical readers; 6) video description and secondary auditory programming (SAP) devices that pick up video-described audio feeds for television programs; 7) accessibility features in electronic documents and other electronic

and information technology that is accessible (either independently or through assistive technology such as screen readers).

Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service similar to court reporting in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.

The free nationwide **telecommunications relay service** (TRS), reached by calling 7-1-1, uses communications assistants (also called CAs or relay operators) who serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones. The communications assistant tells the telephone user what the other party is typing and types to tell the other party what the telephone user is saying. TRS also provides speech-to-speech transliteration for callers who have speech disabilities.

Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a standard voice telephone. The interpreter tells the telephone user what the subscriber is signing and signs to the subscriber what the telephone user is saying.

Video remote interpreting (VRI) is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss. The new regulations give covered entities the choice of using VRI or on-site interpreters in situations where either would be effective. VRI can be especially useful in rural areas where on-site interpreters may be difficult to obtain. Additionally, there may be some cost advantages in using VRI in certain circumstances. However, VRI will not be effective in all circumstances. For example, it will not be effective if the person who needs the interpreter has difficulty seeing the screen (either because of vision loss or because he or she cannot be properly positioned to see the screen, because of an injury or other condition). In these circumstances, an on-site interpreter may be required.

If VRI is chosen, **all** of the following specific performance standards must be met:

- real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the face, arms, hands, and fingers of the person using sign language, regardless of his or her body position;

- a clear, audible transmission of voices; and
- adequate staff training to ensure quick set-up and proper operation.

Effective Communication Provisions

Covered entities must provide aids and services when needed to communicate effectively with people who have communication disabilities.

The key to deciding what aid or service is needed to communicate **effectively** is to consider the nature, length, complexity, and context of the communication as well as the person's normal method(s) of communication.

Some easy solutions work in relatively simple and straightforward situations. For example:

- In a lunchroom or restaurant, reading the menu to a person who is blind allows that person to decide what dish to order.
- In a retail setting, pointing to product information or writing notes back and forth to answer simple questions about a product may allow a person who is deaf to decide whether to purchase the product.

Other solutions may be needed where the information being communicated is more extensive or complex. For example:

- In a law firm, providing an accessible electronic copy of a legal document that is being drafted for a client who is blind allows the client to read the draft at home using a computer screen-reading program.
- In a doctor's office, an interpreter generally will be needed for taking the medical history of a patient who uses sign language or for discussing a serious diagnosis and its treatment options.

A person's method(s) of communication are also key. For example, sign language interpreters are effective only for people who use sign language. Other methods of communication, such as those described above, are needed for people who may have lost their hearing later in life and do not use sign language. Similarly, Braille is effective only for people who read Braille. Other methods are needed for people with vision disabilities who do not read Braille, such as providing accessible electronic text documents, forms, etc., that can be accessed by the person's screen reader program.

Covered entities are also required to accept telephone calls placed through TRS and VRS, and staff who answer the telephone must treat relay calls just like other calls.

Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs are not "aids and services" under the ADA. However, they provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.

The communications assistant will explain how the system works if necessary.

Remember, the purpose of the effective communication rules is to ensure that the person with a communication disability can receive information from, and convey information to, the covered entity.

Companions

In many situations, covered entities communicate with someone other than the person who is receiving their goods or services. For example, school staff usually talk to a parent about a child's progress; hospital staff often talk to a patient's spouse, other relative, or friend about the patient's condition or prognosis. The rules refer to such people as "companions" and require covered entities to provide effective communication for companions who have communication disabilities.

The term "companion" includes any family member, friend, or associate of a person seeking or receiving an entity's goods or services who is an appropriate person with whom the entity should communicate.

Use of Accompanying Adults or Children as Interpreters

Historically, many covered entities have expected a person who uses sign language to bring a family member or friend to interpret for him or her. These people often lacked the impartiality and specialized vocabulary needed to interpret effectively and accurately. It was particularly problematic to use people's children as interpreters.

The ADA places responsibility for providing effective communication, including the use of interpreters, directly on covered entities. They cannot require a person to bring someone to interpret for him or her. A covered entity can rely on a companion to interpret in only two situations.

(1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available.

(2) In situations **not** involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when a) the individual requests this, b) the accompanying adult agrees, and c) reliance on the accompanying adult is appropriate under the circumstances. This exception does **not** apply to minor children.

Even under exception (2), covered entities may **not** rely on an accompanying adult to interpret when there is reason to doubt the person's impartiality or effectiveness. For example:

- It would be inappropriate to rely on a companion to interpret who feels conflicted about communicating bad news to the person or has a personal stake in the outcome of a situation.
- When responding to a call alleging spousal abuse, police should never rely on one spouse to interpret for the other spouse.

Who Decides Which Aid or Service Is Needed?

When choosing an aid or service, title II entities are **required** to give primary consideration to the choice of aid or service requested by the person who has a communication disability. The state or local government must honor the person's choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden (see limitations below). If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide an alternative aid or service that provides effective communication if one is available.

Title III entities are **encouraged** to consult with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person's method of communicating.

Limitations

Covered entities are required to provide aids and services unless doing so would result in an "undue burden," which is defined as significant difficulty or expense. If a particu-

lar aid or service would result in an undue burden, the entity must provide another effective aid or service, if possible, that would not result in an undue burden. Determining what constitutes an undue burden will vary from entity to entity and sometimes from one year to the next. The impact of changing economic conditions on the resources available to an entity may also be taken into consideration in making this determination.

State and local governments: in determining whether a particular aid or service would result in undue financial and administrative burdens, a title II entity should take into consideration the cost of the particular

aid or service in light of all resources available to fund the program, service, or activity and the effect on other expenses or operations. The decision that a particular aid or service would result in an undue burden must be

made by a high level official, no lower than a Department head, and must include a written statement of the reasons for reaching that conclusion.

Businesses and nonprofits: in determining whether a particular aid or service would result in an undue burden, a title III entity should take into consideration the nature and cost of the aid or service relative to their size, overall financial resources, and overall expenses. In general, a business or nonprofit with greater resources is expected to do more to ensure effective communication than one with fewer resources. If the

entity has a parent company, the administrative and financial relationship, as well as the size, resources, and expenses of the parent company, would also be considered.

In addition, covered entities are not required to provide any particular aid or service in those rare circumstances where it would fundamentally alter the nature of the goods or services they provide to the public. In the performing arts, for example, slowing down the action on stage in order to describe the action for patrons who are blind or have vision loss may fundamentally alter the nature of a play or dance performance.

Staff Training

A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Covered entities should teach staff about the ADA's requirements for communicating effectively with people who have communication disabilities. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities. The Department's ADA Information Line can provide local contact information for these organizations.

**For more information
about the ADA,
please visit our website
or call our toll-free number.**

ADA Website: www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website and click on the link near the bottom of the right-hand column.

ADA Information Line

800-514-0301 (Voice) and
800-514-0383 (TTY)

Call M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m., (Eastern Time) to speak with an ADA Specialist (calls are confidential) or call 24 hours a day to order publications by mail.

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